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JAN 30 2007

**OFFICE OF PETITIONS**

In re Application of :  
EVERETT et al :  
Application No.: 09/932,013 :  
Filing Date: August 17, 2001 :  
Attorney Docket No.: 017268-0352595 :

DECISION ON PETITION  
UNDER 37 CFR 1.55

This is a decision on the petition under 37 CFR 1.55(c), filed November 20, 2006, for acceptance of an unintentionally delayed claim under 35 U.S.C. 119(a)-(d) for benefit of the filing date of foreign Application No. GB 9703591.9, filed February 21, 1997.

The petition is **DISMISSED**.

The present nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (2) the surcharge as set forth in 37 CFR 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional.  
(The Director may require additional information where there is a question whether the delay was unintentional.)

The instant petition fails to comply with item (1) above. In this regard, a review of the file record fails to disclose that the priority information was included in an oath or declaration or in an Application Data Sheet in accordance with 37 CFR 1.76(b)(6). Unless provided in an application data sheet, 37 CFR 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent or inventor's certificate for which priority is claimed under 37 CFR 1.55, and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. Note MPEP 201.14, page 200-84 (Rev. 5, August 2006), last paragraph, second column.

In view of the above, compliance with 37 CFR 1.63(c)(2) or 37 CFR 1.76(b)(6) must be satisfied if applicant desires to claim priority to the foreign applications noted in the petition. Any future petition should include a cover letter and be entitled "Renewed Petition under 37 CFR 1.55(c)."'

Applicant is advised that a certified copy of the foreign priority application along with any required processing fee under 37 CFR 1.17(i) must be filed before a patent is granted on the present application. 37 CFR 1.55(a)(2). If the certified copy has been filed in a parent or related application, applicant need only identify the application containing the certified copy. MPEP 201.14(b), Section II. Later Filed Applications, Reissues.

Applicant is further advised that the amendment to the specification filed November 20, 2006 fails to state the relationship of U.S. Application No. 09/023,057, filed February 12, 1998, to the instant application in compliance with 37 CFR 1.78(a)(2)(i). The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims priority to Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. See MPEP Section 201.11, Rev. 5, August 2006, Reference to Prior Application.

Further correspondence with respect to this matter should be addressed as follows:

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